

EXHIBIT #3

IN SUPPORT OF PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF
JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

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Attorneys for Plaintiffs Jeff Pokorny, Larry Blenn and Kenneth Busiere

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

15 Jeff Pokorny, Larry Blenn, and Kenneth
 16 Busiere, on behalf of themselves and those
 similarly situated,

17 Plaintiffs,

18 v.

19 Quixtar, Inc., James Ron Puryear Jr., Georgia
 20 Lee Puryear, and World Wide Group, L.L.C.,
 Britt Worldwide L.L.C., American Multimedia
 21 Inc., Britt Management, Inc., Bill Britt and
 Peggy Britt,

22 Defendants.
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CASE NO. C 07-0201 SC

**DECLARATION OF CHARLES B.
 RENFREW RE ATTORNEYS' FEES IN
 SUPPORT OF JOINT MOTION FOR
 PRELIMINARY APPROVAL OF
 SETTLEMENT AGREEMENT**

24 I, CHARLES B. RENFREW, declare as follows:

25 1. I have been retained as an expert by counsel for Plaintiffs to opine on the
 26 reasonableness of the attorneys' fees sought by counsel for the Plaintiffs in the above-captioned
 27 case. In preparing this declaration, I have reviewed and relied upon the documents and
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1 materials submitted to me by counsel for Plaintiffs, which include the papers filed by the
2 parties in connection with their motion for preliminary approval of the Amended Settlement
3 Agreement, this Court's orders on that motion, declarations of plaintiffs' counsel and time
4 records of plaintiffs' counsel. I have also discussed this matter with counsel for Plaintiffs. In
5 arriving at my opinion, I have assumed that the record will support certain values I have
6 assumed for various items which are part of the proposed settlement of this case.

7 2. Based upon my analysis, if called as a witness, I could and would competently
8 testify as follows.

9 3. I am an attorney at law duly licensed to practice before all of the courts of the
10 State of California. I have been a member of the state bar of California since 1956.

11 4. I graduated from the University of Michigan Law School in 1956. Upon
12 graduation, I joined the law firm of Pillsbury, Madison & Sutro, and became a partner in
13 January 5 of 1965. My practice was principally in the area of anti-trust law.

14 5. From 1972 to 1980, I served as a United States District Court Judge for the
15 Northern District of California.

16 6. In 1980, I became Deputy Attorney General of the United States, serving in that
17 capacity until 1981. I then rejoined Pillsbury, Madison & Sutro.

18 7. In 1983, I joined Chevron Corporation (then Standard Oil Company of
19 California). I served as a director and vice-president responsible for legal affairs. In 1993, I
20 joined the law firm of LeBoeuf, Lamb, Greene & McRae as a partner. I remained there until
21 1997. Since then, I have been in private practice and principally engaged in alternative dispute
22 resolution matters and corporate investigations. I am on the Distinguished Neutrals Panel of
23 the CPR Institute for Dispute Resolution, a leading organization in the Alternative Dispute
24 Resolution field. I also served as Chairman of the Board of Directors of that organization.

25 8. While serving as United States District Court Judge, I taught a variety of
26 subjects at the Federal Judicial College in Washington, D.C. to newly appointed federal judges.

1 During that time, I also taught trial advocacy and other courses at Boalt Hall Law School at the
2 University of California, Berkeley.

3 9. I am a fellow and former president of the American College of Trial Lawyers.

4 10. In connection with my private practice of law and service on the United States
5 District Court, I dealt with numerous applications for attorneys' fees.

6 11. As the chief legal officer of a large international oil company, I had the ultimate
7 responsibility for approving the fees of outside attorneys, which totaled approximately
8 \$100,000,000 a year.

9 12. In my practice as a mediator and arbitrator, I have been involved in disputes
10 concerning attorneys' fees. Perhaps my most significant service was as a permanent member
11 of the arbitration panels that awarded attorneys' fees in the state tobacco cases. While I
12 dissented in a majority of the cases, over \$14 billion in fees were awarded.

13 13. I am familiar with the applicable federal law pertaining to the awarding of
14 attorneys' fees. I am also familiar with applicable California law. I argued the case of
15 *Ketchum v. Moses*, 24 Cal.4th 1122 (2001), in the California Supreme Court on a *pro bono*
16 basis on behalf of a number of public interest attorneys.

17 14. I have been asked to opine on attorneys' fees in a number of cases, but have
18 never testified in any of them.

19 15. The proposed settlement in this case has a number of items of recovery for the
20 Class. The major items are set forth below and the corresponding value that the parties have
21 agreed to for each item. It is these values which I assume are correct and upon which I base my
22 opinion:

23 **Economic Relief**

- 24 • \$34 million cash fund
- 25 • \$21 million product fund. This number represents the retail value of the
- 26 product bundles to be distributed to eligible Class members. Quixtar has
- 27 estimated its cost of such products to be \$13,348,000.

Injunctive Relief

- 5% price reduction for Quixtar products from the January, 2007, pricing levels to distributors, valued at \$53 million.
- Increase in the annual Independent Business Owners (“IBO”) training budget of an average of \$7 million or more over 1007 levels, valued at \$34.8 million.
- Increased quality control with respect to the business support materials not supplied by Quixtar, valued at \$13 million.
- An increase in the refund period from thirty (30) days to ninety (90) days, no quantification of value placed.
- Injunctive relief to orient commissions and bonuses more toward actual sales to end-users, no quantification of value placed.
- A change in the alternative dispute procedures, no quantification of value placed.

16. I do not intend, at this time, to discuss in any detail the ability or qualifications of Plaintiffs’ counsel, nor the effort they made during the trial preparation, motion practice, hearings and appellate phases of this litigation. Similarly, I do not address the legal complexity and number of issues involved. I understand that may be appropriate in connection with the actual application for an attorneys fee award in connection with final approval of the settlement.

17. The award of attorneys’ fees is within the sole discretion of this Court, which has had the opportunity to observe counsel in this matter and is in a far better position to evaluate their work and its worth. Through this declaration, I hope to point out certain factors which I believe the Court should consider in arriving at its decision and upon which I have based my opinion.

18. This case is a common fund case where the attorneys’ fees and costs are taken from the recovery by the Class. In the Ninth Circuit, such cases may permit attorneys’ fees with a benchmark of twenty-five percent (25%) of the value of the recovery. *See, Staton v. Boeing*, 327 F.3d 938, 968 (7th Cir. 2003).

1 19. In my opinion, there is not a single precise amount of the attorneys' fees that
2 may be awarded. Instead, there is a range within which attorneys' fees may be reasonable. The
3 greater the agreement as to the values received by the Class, the narrower the range. Where, as
4 here, there is a dispute as to the value, the range will be larger.

5 20. In this case, depending upon the value given the injunctive relief, the range is
6 quite large. If only the amount of the cash and product funds are considered – \$55 million—
7 25% would be \$13,750,000. If the cost to Quixtar was used instead of the retail value of the
8 products to be distributed, 25% of that amount is \$11,387,000. On the other hand, if the full
9 \$100 million value of the injunctive relief asserted by Quixtar was used, an award of attorneys'
10 fees could exceed \$30,000,000. However, fees in this amount would exhaust the cash proceeds
11 and be unreasonable. Under Ninth Circuit precedent, however, the value of the injunctive relief
12 is a "relevant circumstance" that reasonably supports an increase in the percentage from the
13 25% benchmark and even if viewed conservatively, the injunctive relief provided easily could
14 justify a percentage enhancement of the 25% benchmark sufficient to support an attorneys' fee
15 in the \$15 million range.

16 21. In arriving at my opinion, I have used the value of the injunctive relief asserted
17 by Quixtar. Although Quixtar contended that it had initiated some of the changes in its
18 practices and procedures prior to the litigation, it conceded that the injunctive relief provided in
19 the proposed settlement was valued at approximately \$100,000,000. I am not in a position to
20 provide the Court with a personal evaluation of the value of that injunctive relief. I am not
21 familiar with the entire record in this case, nor do I know the industry or business is involved.
22 Instead, I have used the Quixtar stated values.

23 22. Those values were agreed to by Quixtar, attested to by its witnesses in
24 declarations, and provided to the Court by lead counsel for Quixtar, Mr. Cedric Chao, a highly
25 respected and competent attorney who is known to me to be a leader at the Bar.

26 23. I have also relied upon the declaration of Judge Weinstein that the proposed
27 settlement is fair, reasonable and adequate. Judge Weinstein cited both the "meaningful
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1 monetary consideration” and the “significant injunctive relief” in concluding that the settlement
2 was a fair and reasonable result for all the parties involved.

3 24. Judge Weinstein also noted that the issue of attorneys’ fees was not discussed
4 until the parties reached settlement on the substantive issues. It was his clear understanding
5 that the amount of attorneys’ fees was an issue to be decided by this Court. He recommended
6 approval of the proposed settlement and stated that “the settlement represented the highest
7 settlement amount that the putative class could have achieved at this time.” (Weinstein Dec.
8 ¶21). Judge Weinstein also stated that he believed that “[l]ead counsel’s skill, expertise, and
9 persistence played a substantial role in achieving this significant statement and benefits
10 secured on behalf of the putative class.” (Weinstein Dec. ¶22).

11 25. I also relied upon the declaration of Attorney General Goddard, who testified
12 that “the injunctive relief obtained in this proposed settlement is even more valuable than the
13 substantial economic relief,” as it “change[s] the corporate culture of Quixtar, set[s] a new
14 standard of practice in the direct marketing community and go[es] a long way toward
15 preventing in the future the abuse of IBO recruits that is alleged in the complaint.”

16 26. I, too, recognize that it is this Court that will set the attorneys’ fees, as part of
17 the final approval of the proposed settlement. At this stage of the proceeding the general
18 practice is to set forth in the notice to the Class that attorneys’ fees will be no more than a
19 stated amount. The Court has the authority and responsibility to award a lesser amount if it
20 feels that that amount constitutes reasonable attorneys’ fees under all of the circumstances.

21 27. It is my understanding that the parties initially recommended that the attorneys’
22 fees be set as not to exceed \$20,000,000 to be contained in the notice to the Class. I further
23 understand that the Court was concerned about the relationship of the cash portion of the award
24 with the requested attorneys’ fees.

25 28. I understand that counsel for Plaintiffs will reduce their requested attorney’s fees
26 from \$20 million to \$15 million in light of the Court’s concerns.

1 29. Based upon the above, and upon the assumptions I have made, the \$15 million
2 falls within a reasonable range for attorneys' fees.

3 30. Some courts have applied the lodestar method as a check on the reasonableness
4 of attorneys' fees in a common fund case. I understand that typically this analysis is performed
5 at the time of final settlement approval, but that the Court has requested that Plaintiffs' counsel
6 submit documentation regarding their lodestar at this time.

7 31. The lodestar determination is based upon the careful compilation of time spent
8 and the reasonable hourly compensation each attorney and staff involved in the case.

9 32. For purposes of calculating the lodestar, the time spent should be carefully
10 documented and be reasonably necessary in order to reach the result obtained. Inefficiencies or
11 duplicative efforts are not entitled to compensation. The hourly rate is the hourly rate charged
12 by attorneys of like staff in the area for comparable services. The lodestar may be enhanced by
13 a reasonable multiplier in appropriate cases.

14 33. I have had the opportunity to review the time records provided by the attorneys
15 working on this case at the Boies, Schiller & Flexner ("BSF") firm. Those time amounts are
16 documented by the declaration of Stuart H. Singer and the exhibits to that declaration. The
17 lodestar amounts for the BSF attorneys on this case is \$5,237,459 (which includes \$4,791,961
18 directly on this matter, and \$445,498 of time on the related Bussiere case that I understand was
19 essentially consolidated with this matter).

20 34. The hourly rates for lawyers at the BSF firm used in their lodestar calculation
21 are \$750 for partners Stuart H Singer and Carlos Sires, and \$670 for partners William Dzurilla,
22 which are the three partners who devoted the most time to this matter. Associate time was
23 billed at rates generally in the \$450-460 range, and paralegal rates were \$150.

24 35. There are three partners at the Gary, Williams firm, co-counsel for Plaintiff,
25 who also have worked on this matter: Willie Gary, CK Hoffer, and Maria Sperando. I
26 understand, based on Mr. Gary's declaration, that the lodestar for the Gary, Williams firm on
27 this matter is \$1,021,950, utilizing a \$750 rate for each of the three partners. I note from
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1 Mr. Gary's declaration that, although contemporaneous time records were not maintained, they
2 have sought to be conservative in setting forth the time expended on this matter.

3 36. The rates for counsel identified here are for the most current year in which work
4 was performed on this case (the current standard rates for BSF lawyers are higher). The
5 current rates are used rather than the historic rates. This is appropriate because it has been
6 almost five years to obtain the resolution of this case. These rates are within the rates charged
7 by lawyers of comparable skill and experience involved in major cases like the instant case.

8 37. I have been informed that counsel for Plaintiffs have represented that the
9 lawyers performing work in this case were at the appropriate level, so that partners were not
10 doing work that associates could have done or the attorneys did work that paralegals could have
11 done.

12 38. The combined lodestar of the two firms involved is therefore approximately
13 \$6.2 million. This does not include additional time required to be expended in the future in the
14 settlement approval process or in monitoring obligations under the settlement agreement. If an
15 attorneys fee of \$15,000,000 were awarded to plaintiffs, that would represent that lodestar
16 incurred to date a multiplier of 2.42.

17 39. A multiplier of 2.42 is reasonable in a case of this magnitude. There was not a
18 government case that precedes this case and on which the Plaintiffs could attach their case.
19 The case was complex and difficult. Judge Weinstein, for whom I have the greatest respect,
20 after ten (10) mediation sessions, opined that the proposed settlement was fair, based upon "due
21 consideration to the complexity of the facts and legal contentions and issues". It also avoided
22 years of protracted litigation.

23 CONCLUSION

24 40. For the reasons stated above, it is my opinion that an attorneys' fee of
25 15,000,000 is reasonable and if this Court gives preliminary approval to the settlement, it
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1 would be proper to state in the notice to the Class that the attorneys' fees will not exceed
2 \$15,000,000. The actual award will be determined by this Court at the final hearing.
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4 Dated: November 15, 2011
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7 CHARLES B. RENFREW
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, the foregoing has been served via the CM/ECF system on counsel for Defendants at the following address:

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/s/Stuart Singer
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